IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 11307 of 2004

Between:

Bhagyalakshmi Filling Station, Rep. Managing Partner-K.Kasi Viswanath.
Dealer of Bharat Petroleum Corp. Ltd., D.No.1-1-83/1,
Kotha Venkajipalem, M.V.P.Colony, Visakhapatnam-530 017.

..... PETITIONER

AND

Bharat Petroleum Corp. Ltd., (Agent of India Enterprise), Rep. Territory Manager (Retail),
Visakha Terrotory (Retail), P.B.213, Near Naval Dockyard,
Visakhapatnam-530 014.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, in the nature of a Writ of Mandamus or any other appropriate writ, direction or order declaring the inaction of the respondent in not acceding to the request of the petitioner to send the sample of MAK 2T oil given to the petitioner on 08/06/2004 to an independent laboratory for testing as illegal and void and consequently direct the respondent to send the sealed sample of MAK 2T lubricant oil given to the petitioner on 08/06/2004, for analysis to an independent laboratory and till the report is received from the independent laboratory and explanation, if necessary, submitted by the petitioner defer further action pursuant to the notice No.VT.R.438, dated 23/06/2004

Counsel for the Petitioner:MR.P.KAMLAKAR

Counsel for the Respondent No.: MR.O.MANOHER REDDY

The Court made the following :

O R D E R:

This writ petition is filed seeking a direction to the respondent to send the sample of MAK 2T Oil given to the petitioner on 8.6.2004 to an independent laboratory for testing and to defer further action till its report is received.

On 8.6.2004 the Area Manager (Lubs), Vizag visited the petitioner's outlet and has drawn samples of lubricant oil MAK 2T. He has given one sealed sample to the petitioner. Thereafter on 23.6.2004 the Territory Manager (Retail) of the Corporation issued a show-cause notice to the petitioner bearing No.VT.R.438 dated 23.6.2004 directing the petitioner to submit explanation as the BPCL test failed to meet the specifications with reference to the elements and PIB, for which a reply was given by the petitioner to send the sample to the independent laboratory i.e. the laboratory other than BPCL Laboratory for analysis and that on receipt of a copy of the report from the independent laboratory he would give the explanation for the show-cause notice. But, the respondents have not taken any steps in that regard, hence, the present writ petition.

Learned counsel for the petitioner vehemently contended that the lubricants were supplied in sealed conditions and therefore there is no scope or possibility for the petitioner to meddle or tamper with the seals so as to do adulteration and therefore the petitioner requested the respondent to send one sample given to him for analysis to an independent laboratory other than BPCL Laboratory, for which no reply was given by the respondent, which is an arbitrary action on the part of the respondent. Hence, he prays to give a direction to send the sample to an independent laboratory other than BPCL laboratory.

On the other hand, learned counsel for the respondent contended that the samples have been drawn properly from the containers and as per the report of the Analyst the MAK 2T Oil does not conform to the standards with reference to the elements and PIB and therefore the authorities issued the show-cause notice and the

petitioner can as well give explanation and therefore the petition is totally devoid of merits. Hence, he prays to dismiss the same.

It is not in dispute that on 23.6.2004 the Territory Manager (Retail) of the Corporation issued a show-cause notice to the petitioner, which is impugned in the writ petition, directing the petitioner to submit the explanation within seven days. The sample taken on that day does not conform to the specifications with reference to elements and PIB, a test report dated 19.6.2004 was also enclosed to the show-cause notice, for which the petitioner gave a reply stating that the sample given to him may be sent to another independent laboratory other than BPCL laboratory for analysis and that on receipt of a copy of the report from the independent laboratory he would furnish explanation to the show-cause notice.

It is not in dispute that one sample was sent to BPCL test laboratory and one sample of MAK 2T Oil was furnished to the petitioner. The purpose of giving one sample to the petitioner is not an empty formality. If the petitioner does not satisfy with the test conducted by the BPCL Lab, he can ask the authorities to send the sample to an independent laboratory so that the said independent lab also gives its opinion.

An agreement was reached between the parties in pursuance of the agitation made by the Federation of All India Petroleum Trade. Discussions were held between the Directors (Marketing) of all the Oil Companies, including BPCL, and the representatives of the Federation on 17.8.2001. As per Clause (5) of the Agreement, the dealers will have an option of getting the retained samples tested for Quality/Adulteration from any independent lab/agency listed in the MS/HSD Control Order. So, rightly the petitioner exercised this Clause and requested the respondent to send the sample to an independent laboratory other than BPCL laboratory for analysis, for which the respondent has not passed any orders. As per the settlement, the respondent is bound to act in accordance the terms and conditions in the settlement and is

required to send the second sample to an independent laboratory and thereafter the petitioner can as well give the explanation to the show-cause notice. Therefore, it is a fit case where a direction can be given to the respondent as it acted contrary to the agreement, to send the sample given to the petitioner to an independent laboratory and after receipt of the report from the independent laboratory the petitioner is required to give an explanation to the show-cause notice and thereafter the respondent has to take appropriate decision as per law.

In the result, the writ petition is disposed of directing the respondent to send the sample of MAK 2T Oil given to the petitioner on 8.6.2004 to an independent laboratory other than for testing and thereafter the petitioner is required to give the explanation to the show-cause notice dated 23.6.2004 and after receipt of the explanation the respondent is at liberty to pass appropriate orders as per law. No costs.

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K. C. Bhanu, J.

Dt. 14---07—2004.

MVB.

Date: 14-07-2004

After pronouncing the order, learned counsel appearing for the respondent stated that if any order is passed consequent upon the show cause notice, the question of giving direction does not arise.

On the other hand, learned counsel appearing for the petitioner contended that till yesterday, no order is passed by the respondent Corporation.

This Court is of the view that even if the order is passed, it may be subject to the result of the Laboratory Report that may be received from the Independent

Laboratory. If the order is not passed, the sample has to be sent to the Independent Laboratory other than BPCL.

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(K.C.BHANU, J)

Date: 14.07.2004

Note: c.c. in two days.

(bo)

kvni.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. Bharat Petroleum Corporation Ltd., (A Government of India Enterprise), rep.by Territory Manager(Retail), Visakha Territory (Retail), P.B.NO.213, Near Naval Dockyard, Visakhapatnam-530 014.

2 Two CD copies.